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November 23<sup>rd</sup>, 2011

United States Patent & Trademark Office  
Commissioner for Patents /Office of Petitions  
P.O. Box 1450  
Alexandra, VA 22313

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DEC 09 2011

OFFICE OF PETITIONS

RE: Patent # 6,049,910 >> Bullet Points Per Conversation on November 17<sup>th</sup>, 2011 with Petitions Attorney, Mr. Cliff Congo

Dear Mr. Congo,

I want to thank you, the Office of Petitions and the USPTO for granting my recent petition and reinstating my patent. Your decision was greatly appreciated and valuable to me and my company.

This note to you is just to present certain bullet point pieces of information to help determine if I am eligible for any refunds. Per our conversation on Thursday, November 17<sup>th</sup>, 2011, I have compiled some issue points that help determine what I see from my vantage point:

- What is the policy of USPTO if an error or innocent mistake is made during a petition process? Will the consequences be as strong as they have been for me the petitioner who allegedly did not pay his maintenance fee in full because of being \$30.00 short. There have been errors during this process and I should be refunded for all the fees I should not have had to pay. That is my opinion.
- One of the issues I would like to address again is: On Page 4 of your "Decision On Petition letter, dated April 13<sup>th</sup>, 2011, under the Analysis heading, in the last paragraph, second sentence, it states that; The record discloses that petitioner submitted a maintenance fee payment of \$1,180, that was \$30 short of the \$1,210 due at the time, on April 16<sup>th</sup>, 2008. I have enclosed a copy of the cashier's check I sent in for the amount of \$1,215.00 Why didn't I pay \$1,180.00? What made me pay \$1,215.00? Why wasn't the alleged error amount corrected in this April 13<sup>th</sup>, 2011 letter? It should have read "petitioner submitted a maintenance fee payment of 1,215.00 that was \$30.00 short. Some miscommunication errors have occurred.
- I have faxed a copy of my refunded, non-accepted maintenance fee which was paid back to me on June 6<sup>th</sup>, 2008 which is \$35.00 short from what I sent and clearly shows that the system still had my amount due as \$1,180.00. One would think it would have changed to \$1,245.00 as balance due on the record after two months had gone by.
- The letter dated March 20<sup>th</sup>, 2009, on page 2, (top of page last sentence) "See Highlighted USPTO error statement."
- I have a copy of my Reconsideration fee should a refund become due.
- I have faxed a copy of the check mailed to cover all the fees I paid, (\$1,940.00), on my last petition. \$700.00 could also be refunded.

Please let me know your determination in these matters.

Thank you,

Andre McCarter  
(818) 984-6500

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Page 4

Patent No. 6,049,910

the Office requests that petitioner provide an accounting of his expenses throughout the period.

\*Furthermore, there is a discrepancy in the record. The record discloses that petitioner submitted a maintenance fee payment of \$1,180, that was \$30 short of the \$1,210 due at the time, on April 16, 2008. Now petitioner is asserting that due to financial hardship, he was unavoidably prevented from paying the maintenance fee on or before April 18, 2008. It is not clear then how petitioner was able to pay \$1,180 on April 16, 2008. Rather, it appears that petitioner made an unintentional mistake in not paying the correct maintenance fee amount on April 16, 2008. Petitioner would need to overcome this discrepancy to support a showing of unavoidable delay.

### Conclusion

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in § 1.17(f). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Accordingly, on request for reconsideration, it is extremely important that petitioner supply any and all relevant information and documentation in order to meet his burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

If on request for reconsideration, the delayed payment of the maintenance fee is not accepted, then the \$1240 maintenance fee and the \$200 surcharge set forth in §1.20(i) are subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. (Petitioner may request a refund of the maintenance fee and surcharge by writing to the Mail Stop 16, Director of the USPTO, P.O. Box 1450, Alexandria VA 22313-1450). A copy of the last decision rendered should accompany the request for refund).

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop Petitions  
                                 Commissioner for Patents  
                                 P.O. Box 1450  
                                 Alexandria VA 22313-1450

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record the maintenance fee."<sup>1</sup> The petition "must be filed within 2 months of the action complained of", and **must be accompanied by a \$200 fee.** However, the petition may include a request that the fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Patent and Trademark Office.<sup>2</sup>

Here, petitioner has not submitted the \$200 fee required for consideration of the petition.

If petitioner can not offer proof that he timely filed the maintenance fee and surcharge **in full** prior to the expiration date of the patent, petitioner may seek to reinstate the expired patent pursuant to 37 CFR 1.378(c). A form is enclosed for petitioner's convenience.

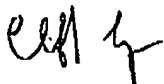
Receipt of the \$1,180 maintenance fee and \$65 surcharge, submitted with the instant petition, is acknowledged. However, until such time as patentee files a grantable petition under 37 CFR 1.377 or 37 CFR 1.378, the patent remains expired.

Further correspondence should be addressed as follows:

By mail:                   Mail Stop Petitions  
                          Commissioner for Patents  
                          P.O. Box 1450  
                          Alexandria VA 22313-1450

By FAX:                   (571)273-8300  
                          Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3207.



Cliff Congo  
Petitions Attorney  
Office of Petitions

Enc: PTO/SB/66 (3 pages)  
      Privacy Act Statement (1 page)

<sup>1</sup> 37 CFR 1.377(a). Emphasis added.

<sup>2</sup> See 37 CFR 1.377(b).

## NOTICE TO CHECK RECIPIENT

TREASURY-FINANCIAL MANAGEMENT SERVICE TFS FORM 3901 (Rev. )

VENDOR NAME: ANDRE MCCARTER

VENDOR I.D. NUMBER: ANDRE MCCART

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 FOR QUESTIONS RELATING TO REFUND, CONTACT  
 DAVY KHLOK: 571-272-6060  
 MAILROOM DATE: 06/06/2008  
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\*\*\*\*\*\$1,940.00

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TO USPTO- COMMISSIONER OF PATENTS OFFICE OF PETITIONS  
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OF PATENT#: 6,049,910

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## Fax Send Report

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November 23<sup>rd</sup>, 2011

United States Patent & Trademark Office  
 Commissioner for Patents Office of Petitions  
 P.O. Box 1450  
 Alexandria, VA 22303

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- One of the issues I would like to address again is: On Page 6 of your "Decision On Petition letter, dated April 13<sup>th</sup>, 2011, under the Analysis heading, in the last paragraph, second sentence, it states that: The record discloses that petitioner submitted a maintenance fee payment of \$1,184, that was \$90 short of the \$1,274 due at the time, on April 14<sup>th</sup>, 2008. I have enclosed a copy of the examiner's check I sent to for the amount of \$1,215.00. Why didn't I pay \$1,184.00? What made me pay \$1,215.00? Why wasn't the alleged error amount corrected in this April 13<sup>th</sup>, 2011 letter? It should have read "petitioner submitted a maintenance fee payment of \$1,215.00 that was \$90.00 short. Some miscommunication errors have occurred.
- I have faxed a copy of my refunded, non-accepted maintenance fee which was paid back to me on June 6<sup>th</sup>, 2008 which is \$36.00 short from what I sent and clearly shows that the system still had my amount over as \$1,184.00. One would think it would have changed to \$1,245.00 as balance due on the record after two weeks had gone by.
- The letter dated March 20<sup>th</sup>, 2009, on page 2, (top of page last sentence) "the HighLighted USPTO error statement."
- I have a copy of my Reconsideration fee should a refund because due.
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Please let me know your determination in these matters.

Thank you,

Andrew McCarter  
 (916) 904-6600